

December 14, 2012

The Honorable Terry E. Branstad

Members of the General Assembly

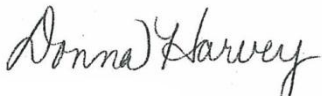
Dear Governor Branstad and Members of the General Assembly:

Please accept the following report submitted by the Iowa Department on Aging on behalf of the Elder Abuse Task Force. The report was drafted and the Task Force was convened pursuant to House File 2387, which states that the Iowa Department on Aging shall submit a report of its reviews, findings and recommendations developed pursuant to House File 2387.

House File 2387 further states that the report shall be submitted to the Governor and the General Assembly.

Please consider the submittal of this report as compliance with the mandates established in House File 2387.

Sincerely,



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Elder Abuse Task Force Report

**Pursuant to HF 2387:
An Act Relating to Improvements to and
Implementation of Laws Concerning Elder Abuse**

**Submitted by:
The Iowa Department on Aging
December 14, 2012**

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Executive Summary

During its 2012 session, Iowa's 84th General Assembly passed House File 2387. The bill was signed into law by Governor Branstad and mandated a review of occurrences of and laws relating to abuse, neglect, or exploitation of individuals who are sixty years of age or older. After conducting the review, the twenty-three member Elder Abuse Task Force presents the following recommendations. These recommendations build upon current Iowa law and practice for the purpose of protecting older Iowans from abuse, neglect, and exploitation.

The Recommendations

1. Elder Abuse Definition and Law.

Develop an elder abuse law which focuses on the unique needs of older Iowans and creates definitions which protect older Iowans who do not meet the dependent adult abuse criteria.

2. Safeguards from Financial Exploitation.

Implement safeguards as outlined in the full report to ensure financial security against exploitation for older Iowans. Current financial power of attorney and conservatorship laws do not adequately protect older Iowans and their assets from perpetrators or from persons in a position of trust.

3. Elder Abuse Intervention System.

Implement a system focused on prevention, intervention, detection, and provision of services to maintain the health, welfare, safety, and resources of the older Iowan. The recommended system to implement and fund statewide is based upon the Elder Abuse Initiative demonstration projects previously funded through the Senior Living Trust Funds and piloted in 22 counties.

4. Allocation of Service Dollars.

To fully implement an elder abuse intervention system, funding for services is needed to ensure protection and safety.

5. Specialized Education and Training.

Achieve consistency and effectiveness in addressing and preventing elder abuse through the development of a single training module to increase knowledge and distinguish between elder abuse and dependent adult abuse.

6. Laws Related to Powers of Attorney, Conservatorship Abuse, and Office of Substitute Decision Maker.

Strengthen the laws pertaining to financial powers of attorney, and conservatorship. Power of attorney documents and conservatorships often serve as powerful tools for exploiters.

7. Multi-Disciplinary Teams (MDT).

Review the MDT process and evaluate to ensure teams meet and that collaboration occurs to better serve older Iowans who are victims of or are vulnerable to elder abuse. Currently, MDT's are allowed to exist under the Dependent Adult Abuse Law but are not statewide.

8. Single Entry Point.

Establish a single point of contact to discuss concerns of or report elder abuse, neglect and financial exploitation. The current system and laws for protecting older Iowans are fragmented and do not meet older Iowan's needs.

9. Safe Havens.

Create specific locations to house a victim of elder abuse. A victim of elder abuse is generally removed from their home in an attempt to keep them safe from a perpetrator. If an older Iowan needs a safe place to stay there are no specific locations that can meet the unique needs of an older person.

10. Ongoing Collaboration.

Continue the dialogue in an effort to protect older Iowans. As the population of Iowa grows older, the work and issues surrounding elder abuse needs to continue through a task force which is geared to discussing the issues and researching best practices.

It is the intent of these recommendations to provide for the prevention, detection and correction of abuse, neglect, and financial exploitation, through the creation of an elder abuse law and intervention services that work in partnership with the current laws such as dependent adult abuse, domestic violence, and criminal investigations.

The Task Force encourages the implementation of all recommendations as each plays an integral part toward the solution. The pursuit of just one or two recommendations without the others will not create a comprehensive system of protection for older Iowans.

The full report and discussion of the issues specifically requested by HF 2387 follow.

“Only 1 in 23.5 cases of elder abuse is reported ... and for financial abuse, only 1 in 44 cases is reported”

(Under the Radar, 2011)

Mandate

During its 2012 session, Iowa's 84th General Assembly passed House File 2387. The bill was signed into law by Governor Branstad. House File 2387 mandates the Iowa Department on Aging to partner with the Department of Inspections and Appeals, the Department of Human Services, the Iowa Attorney General's Office, and others to conduct a comprehensive review of occurrences of and laws relating to the abuse, neglect, or exploitation of individuals in the state who are sixty years of age or older. The review shall include all of the following:

1. The current situation of abuse, neglect, and exploitation of individuals in the state who are sixty years of age or older.
2. An analysis of laws in other states related to the abuse, neglect, or exploitation of individuals who are sixty years of age or older.
3. An analysis of current state law addressing issues related to abuse, neglect, or exploitation of an individual who is sixty years of age or older and recommendations for improvements to existing law or implementation of other laws specifically addressing abuse, neglect, or exploitation of an individual who is sixty years of age or older.
4. Other information the department on aging deems relevant.

The department on aging is required to, by December 15, 2012, submit a report of its review including findings and recommendations to the governor and general assembly. (See Appendix A)

Recommendations for Improvements to Existing Law or Implementation of Other Laws

The following recommendations are based on the assessment and findings of 1) Iowa's current situation; 2) The analysis of laws in other states; 3) The analysis of current Iowa law; and 4) Past research and community feedback on Iowa's adult abuse system. A more in-depth look at these findings follows the recommendations.

Importantly, these recommendations place the fewest possible restrictions on personal liberty, the exercise of constitutional rights consistent with due process, and protection from abuse, neglect, and financial exploitation.

Recommendation 1 Elder Abuse Definition and Law

Develop an elder abuse law which focuses on the unique needs of older Iowans and creates definitions which protect older Iowans who do not meet the dependent adult abuse criteria.

The Older Americans Act (federal law) broadly defines "elder abuse", as abuse, neglect, and financial exploitation of individuals age 60 or older. Iowa needs to have a clear and useable definition of elder abuse consistent with the federal definition. Iowa does not currently have an elder abuse law, but does have a dependent adult abuse law.

The current abuse laws do not protect older individuals who are not dependent and do not protect older Iowans who are abused, neglected or exploited by someone other than a caretaker. For the system to work to protect older individuals, Iowa needs an elder abuse law and definition which will

supplement the current laws in place to protect victims of abuse, neglect and exploitation.

The Task Force is not providing specific language recommendations for how elder abuse is defined, but rather is identifying different elements that would need to be defined. Through Task Force conversations, it was noted that the following issues need further consideration:

- What are the allegations of abuse that would be investigated;
- What factors need to be considered when determining who is a victim;
- What role does capacity and undue influence play;
- What constitutes a crime;
- How are physical, emotional, and sexual abuse, financial exploitation, neglect and self-neglect defined; and
- Is there mandatory reporting, and are there penalties for failure to report.

Recommended elements needing to be defined include, but are not limited to:

- Physical Abuse
- Sexual Abuse
- Emotional or Psychological Abuse
- Neglect
- Self-Neglect
- Financial Exploitation
- Sexual Exploitation
- Capacity/Lacks Capacity to Consent
- Deception
- Intimidation
- Mental Suffering
- Undue Influence
- Position of Trust

Potential definitions were drafted by a small workgroup convened in 2011. (See Appendix C)

Recommendation 2

Safeguards from Financial Exploitation

Implement safeguards as outlined in Recommendation 6, “Laws Related to Powers of Attorney, Conservatorship Abuse and the Office of Substitute Decision Making” to ensure financial security against exploitation for older Iowans. Current financial power of attorney and conservatorship laws do not adequately protect older Iowans and their assets from perpetrators or from persons in a position of trust.

Factors such as undue influence and cognitive impairment need to be considered and defined.

The proposed recommendations in #1 above as well as in #6 below will help address this recommendation.

Recommendation 3

Elder Abuse Intervention System

Implement a system focused on prevention, intervention, detection and provision of services to maintain the health, welfare, safety, and resources of the older Iowan. The recommended system to implement and fund statewide is based upon the Elder Abuse Initiative demonstration projects previously funded through the Senior Living Trust Funds and piloted in 22 counties.

A) The Elder Abuse Initiative

In 2001, the Iowa Legislature appropriated funding for demonstration projects in a few areas of the state to create a system to respond to concerns of potential elder abuse for at-risk older populations. This system became known as the Elder Abuse Initiative. The Elder Abuse Initiative Demonstration Projects focused on the prevention,

intervention, detection, and reporting of abuse, neglect and financial exploitation once suspected. With the Elder Abuse Initiative, many concerns for older Iowans were able to be resolved with supports and services, rather than needing an abuse investigation. Through this program, the Department on Aging gathered data, developed protocols for the prevention and intervention of elder abuse, neglect and financial exploitation situations; and assisted older Iowans, who otherwise would not have received assistance.

Due to the results experienced through the Elder Abuse Initiative, it is recommended that the demonstration projects are continued and that the models developed through these projects be replicated statewide. The Elder Abuse Initiative outcomes are listed under “Additional Information and Research” in this report.

The Elder Abuse Initiative model is very similar to the Differential Response or Family Assessment Response movement across the country in the child abuse realm. These response systems, like the Elder Abuse Initiative, have core elements such as:

1. “Response system assignments depend on an array of factors, such as the presence of imminent danger, level of risk, presenting case characteristics;
2. Original assignments can change, based on new information that alters risk level or safety concerns;
3. Services are voluntary in a non-investigative response; and
4. Families (older individuals) are served in a non-investigative fashion.”

(National Quality Improvement Center, University of Colorado (2012))

B) Collaboration on Dependent Adult Abuse Issues.

To further enhance the protections of older Iowans and allow a seamless referral system between the Department of Human Services and the Elder Abuse Initiative Program, it is recommended that Iowa Code 235B.3(9) be expanded to include “any referral involving an individual age 60 or older will also be referred to the Area Agency on Aging”.

Recommendation 4 Allocation of Service Dollars

To fully implement an elder abuse intervention system, funding for services is needed to ensure protection and safety.

Through the Elder Abuse Initiative Demonstration Projects, it was discovered that many times, older Iowans who are victims of abuse, neglect or financial exploitation need immediate access to services in order to ensure the safety of their person or property. Unfortunately, immediate access to funds to pay for needed services is not readily available. Services might include the need to obtain a restraining order, revocation of a power of attorney document, or filing court fees to prevent further victimization and financial exploitation by a fiduciary.

“Nearly 1 in 10 financial abuse victims turn to Medicaid as a direct result of the exploitation”
(Gunther, 2011)

One of the many assets of the Elder Abuse Initiative was the instant availability of service dollars for

immediate needs to allow the older Iowan to stay in their home safely. Therefore, to ensure an adequate system of protection, the availability of flexible service dollars to the Elder Abuse Initiative programs is a necessity.

Recommendation 5

Specialized Education and Training

Achieve consistency and effectiveness in addressing and preventing elder abuse through the development of a single training module to increase knowledge and distinguish between elder abuse and dependent adult abuse.

Currently, hundreds of training manuals exist within this state. Each training curriculum approaches the issue differently and therefore has different requirements for what is presented. This makes for inconsistency and confusion. A single, comprehensive training module would standardize knowledge across disciplines and reduce inconsistencies and subjective interpretations of what constitutes elder abuse and dependent adult abuse. Additionally, sub-courses specific to each discipline (medical professionals, financial institution staff, law enforcement, etc.) would serve to further clarify roles and promote more appropriate and timely response strategies, thereby decreasing variability among responders.

Certification of those providing instruction in these courses would further ensure consistency and establish an educational standard. Currently, Iowa Code Section 135.11(24) establishes an Abuse Education Review Panel for "review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the person a mandatory reporter of child or dependent adult abuse when the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board."

"90% of abusers are family members or trusted others"
(National Center on Elder Abuse, 1998)

and new curricula are no longer being approved. Accordingly, organizations and individuals may only gain approval to use existing curricula.

The Iowa Department on Aging collaborated with the Departments of Human Services, Inspections and Appeals, and Public Health to develop the curriculum "Trainer's Guide for Mandatory Reporters of Dependent Adult Abuse" in compliance with Iowa Code 235B.16 (1). In addition, the Department on Aging has administrative rules, which went into effect May 2006, requiring entities and individuals who utilize this curriculum to be certified and Train the Trainer Certification sessions are conducted via webinars three times per year. Therefore, it is recommended the Department on Aging take the lead on creating the standard training and certification of trainers.

Recommendation 6

Laws Related to Powers of Attorney, Conservatorship Abuse, and Office of Substitute Decision Maker

Strengthen the laws pertaining to financial powers of attorney, and conservatorships. Power of attorney documents and conservatorships often serve as powerful tools for exploiters.

A) Powers of Attorney Abuse

Powers of attorney are the vehicle by which perpetrators are often able to financially exploit older Iowans. Assistant Polk County Attorney Celene Gogerty, who prosecutes exploiters, has said, "This document is so dangerous, I call it "legal dynamite. A power of attorney is legal dynamite because if it is used correctly, it is incredibly powerful and useful. If not, it blows up in your face. But unlike actual dynamite, the use of a power of attorney document is not really regulated."

(See Appendix B)

A power of attorney for financial decisions is a written document by which one person (the principal) gives another person (the attorney-in-fact) the authority to make financial decisions on the principal's behalf. It creates a relationship wherein the attorney-in-fact is authorized by law to make financial decisions on behalf of the principal, putting the attorney-in-fact in a position to unduly influence and misuse or steal the principal's assets.

"This document is so dangerous; I call it 'legal dynamite'."
Celene Gogerty,
Assistant Polk County Attorney
(August 2012 Elder Abuse Summit)

Iowa Code Chapter 633B provides legal recognition to powers of attorney under which the principal may give an attorney-in-fact the authority over the financial affairs of the principal. Chapter 633B does not, however, include any safeguards against abuse by attorneys-in-fact nor does it provide any remedies for such abuse.

1. Revisions to Power of Attorney Act, Iowa Code, Chapter 633B

Amend Iowa Code Chapter 633B to adopt the provisions of the Uniform Power of Attorney Act (UPOAA). UPOAA provides safeguards against power of attorney abuse including provisions for prevention of abuse, the detection of abuse and the redress of abuse.

The UPOAA was promulgated by the Uniform Law Commission whose members are legal experts appointed by state governments to research, draft and promote enactment of state laws. The UPOAA has thus far been adopted in thirteen (13) states, including Nebraska and Wisconsin.

The following are specific examples of recommended code provisions to strengthen safeguards against power of attorney abuse:

- a. Require registration when the principal becomes incapacitated.

Currently, there is no requirement or option to register a power of attorney document. Further, there is no statutory procedure by which a family member, friend or other interested party who suspects that the attorney-in-fact might be abusing the power of attorney can directly seek court review. These omissions serve as roadblocks in the protection of the older lowan and makes it difficult, if not impossible, to prevent, detect and remedy such abuse.

- b. Authorize a civil action against an attorney-in-fact for the abuse of a power of attorney document and authorize remedies such as punitive damages under specific circumstances, attorneys' fees, and court costs, and authorize a cause of action to survive the death of the victim.

Currently, the lack of such a provision creates major barriers to the pursuit of civil actions by elderly persons victimized by power of attorney abuse and other forms of financial exploitation. This omission results in many older lowans simply suffering in silence or becoming the subject of prolonged litigation.

- c. Create a rebuttable presumption of fraud upon the transfer by an attorney-in-fact of any of the principal's property or resources in such a way that does not financially benefit the principal, unless the principal specifically allows such a transfer in the power of attorney document.

- d. Amend the Iowa Code to require all attorneys-in-fact to sign a notarized acknowledgement of their fiduciary duties under a power of attorney document in order for that power of attorney to be considered valid.

Iowa courts have recognized that the attorney-in-fact has fiduciary duties which include acting in good faith on the principal's behalf; avoiding any act of self-dealing; acting only as authorized by the contract; and providing all material facts to the principal. *Kurth v. Van Horn*, 380 N.W.2d 693 (Iowa 1986); *Sinnard v. Roach*, 414 N.W.2d 100 (Iowa 1987); *Estate of Crabtree*, 550 N.W.2d 168 (Iowa 1996); *State v. Flax*, 2002 WL 100677 (Iowa App.).

(See Appendix D1 & D2)

2. Civil Protection/Restraining Orders

Authorize civil protection/restraining orders allowing an individual's assets to be frozen and transactions involving their property to be encumbered under designated circumstances so as to prevent the loss of assets due to power of attorney abuse by an attorney-in-fact.

Currently, Iowa Code chapter 235B authorizes courts to issue protective orders but only in cases of "dependent adult abuse" as defined by the Code and only the Department of Human Services can file a petition for such an order. However, there is no grant of express authority for a civil protection/restraining order to prevent loss of an elderly person's assets or property due to power of attorney abuse.

3. Criminal Action and Sanctions for Power of Attorney Abuse

- a. Criminalize financial exploitation, specifically including power of attorney abuse with an option for enhanced sentencing of a person convicted of a criminal offense against an elderly person involving financial exploitation and/or power of attorney abuse.

There are several reasons why a new criminal statute would be important:

- Iowa Code 235B criminalizes "dependent adult abuse", however, it is only applicable where the dependent person is both physically and mentally dependent and the person perpetrating the financial exploitation or power of attorney abuse is the dependent adult's caregiver. Creating a criminal statute would allow for prosecution of persons falling outside the limited scope of Chapter 235B.
- Iowa Code 702.19 criminalizes "theft", however, financial exploitation can occur in many ways other than traditional theft, such as using undue influence, duress, deception, false representation or by false pretenses. A separate criminal statute with financial exploitation by a power of attorney document would make prosecution of elder financial exploitation much simpler for the parties and create a greater chance of success for making the victim whole.
- The current criminal statutes are not sufficient to protect victims of elder financial exploitation, especially when the exploitation is perpetrated through a financial power of attorney. The reality is both statistically and anecdotally, these cases are not getting reported or prosecuted.

- Older Iowans deserve special protections due to the high rate of financial exploitation, their vulnerability, and the large amounts of assets at risk.

Criminalizing “financial exploitation” would demonstrate that the State of Iowa has already made it a priority to fight elder abuse. Iowa has made it a point to recognize certain individuals as being more vulnerable and requiring a higher level of protection. Perpetrators of child abuse and domestic violence could be prosecuted under the assault statute. However, through focused provisions, the legislature has recognized that the victims in these situations are more vulnerable than the general population and created stand-alone criminal sanctions. As noted above, older Iowans are equally as vulnerable and require this additional protection.

- Amend Iowa Code section 633.535, which currently denies an inheritance to an individual if he or she caused the death of a decedent, to also bar an individual from receiving an inheritance if the court determines that the individual financially exploited the decedent.
- Define “informed consent” in Iowa Code 235B so a caretaker’s obligations on behalf of a dependent adult are known.

Currently, “informed consent” is not defined and as a result caretakers do not understand the type of consent that is required of the dependent adult. Further, the lack of definition can be a barrier to the prosecution of financial exploitation cases. Where lack of “informed consent” is an element of the crime, the State is currently required to

prove the existence of an undefined concept.

B) Conservatorship Abuse

- Amend Iowa Code chapter 633 to require background checks for prospective conservators in order to determine whether they have been convicted of a crime that would disqualify them from serving as a conservator.

Currently, background checks are not performed on prospective conservators. As a result, the courts are unknowingly appointing individuals who are not appropriate to serve as fiduciaries. Under this recommendation, the court would have full discretion in determining which convictions would be disqualifying, taking all factors into consideration.

- Implement a monitoring and assistance program for conservatorships utilizing well trained and supervised volunteers to assist courts in carrying out their traditional function of monitoring these court-authorized relationships and providing needed assistance to individuals serving in the capacity of conservator.

The Iowa Code contemplates the ongoing court monitoring of conservatorships in order to ensure that incapacitated persons (wards) are receiving appropriate financial management and protection. Unfortunately, our courts lack the resources to perform fully their monitoring function and provide needed assistance to those serving as conservators. Initially, a pilot project could be established involving the University of Iowa, College of Law and the Office of Substitute Decision Maker.

The Department on Aging has been and will continue to work in collaboration with

the National Health Law & Policy Resource Center at the University of Iowa, College of Law, to conduct research and surveys to identify abuse issues involving guardianships, conservatorships and Power of Attorney documents. A separate report setting forth the results of this research and these surveys is in the process of being developed by the Center.

C) Office of Substitute Decision Maker

Iowa Code 231E creates the Office of Substitute Decision Maker (OSDM). While the law creating the OSDM is still in force, the partial funding given for initial operation was eliminated in 2009. During the short life of the OSDM, the Office made a significant difference in the lives of older Iowans subject to guardianship and conservatorship by serving as a visible advocate when abuse, neglect or financial exploitation was suspected. The OSDM intervened in a number of cases and directly brought to the attention of the court the suspicious actions of the guardian or conservator.

It is recommended that the Office of Substitute Decision Maker be re-instituted to serve in a statewide capacity as a decision maker of last resort for individuals who are being abused, neglected or financially exploited who are in need of such assistance.

Recommendation 7 Multi-Disciplinary Teams (MDT)

Review the MDT process and evaluate to ensure teams meet and that collaboration occurs to better serve older Iowans who are victims of or are vulnerable to elder abuse. Currently, MDTs are allowed to exist under the Dependent Adult Abuse Law but are not statewide.

Ensuring that MDTs meet across the state allows all partners involved in abuse, neglect, and financial exploitation to collaborate, identify barriers and provide for resolution. As established in Iowa Code 235B.1(1) “local or regional Multi-Disciplinary Teams assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and deposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines relative to dependent adults. Members of a team shall include but are not limited to persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.”

Currently, MDTs only meet in a few areas of the state. Utilizing the MDTs and expanding their purview to include elder abuse, neglect and financial exploitation would increase partnerships on the local level and optimize limited resources.

Recommendation 8 Single Entry Point

Establish a single point of contact to discuss concerns of or report elder abuse, neglect and financial exploitation. The current system and laws for protecting older Iowans are fragmented and do not meet older Iowan’s needs.

One statewide phone number to request assistance and report suspicions of elder abuse should be developed in coordination with other state health and human service-type initiatives. This number would connect

callers to trained professionals for referral to the appropriate resources. Currently, lowans are transferred numerous times before reaching the appropriate agency. NOTE: Several states are utilizing the single entry point contact concept for the Aging and Disability Resource Center network.

Recommendation 9 Safe Havens

Create specific locations to house a victim of elder abuse. A victim of elder abuse is generally removed from their home in an attempt to keep them safe from a perpetrator. If an older lowan needs a safe place to stay there are currently no specific locations that can meet the unique needs of an older person.

Iowa does not have Safe Havens for individuals age 60 or older. Safe Havens are identified locations for older victims to go while the situation is addressed. Collaboration with long-term care facilities, assisted living programs, Area Agencies on Aging, Department of Inspections and Appeals, Department of Human Services and other stakeholders needs to be established to further discuss how Safe Havens can be mirrored from other state's models and customized for older lowans.

Recommendation 10 Ongoing Collaboration

Continue the dialogue in an effort to protect older lowans. As the population of Iowa grows older, the work and issues surrounding elder abuse needs to continue through a task force which is geared to discussing the issues and researching best practices.

Continue the work the Elder Abuse Committee and Task Force have done by

requiring the Department on Aging to carry on the efforts of addressing the issue of elder abuse, neglect and financial exploitation as established in the Federal Older American's Act and Iowa Code 231. These efforts would include addressing a number of issues raised at the Elder Abuse Summit that were not able to be addressed in this initial report.

Summary

Iowa's current system for protecting older lowans is fragmented and does not include an elder abuse law. Currently, a victim of elder abuse or a concerned individual trying to assist a victim of elder abuse must attempt to fit within one of the laws or systems that exist but may not work effectively to protect an older person. Iowa has a dependent adult abuse law which is administered by the Department of Human Services and the Department of Inspections and Appeals. This system is necessary to ensure the safety and protection of Iowa's dependent adults. To utilize this system:

1. A victim must be a dependent adult;
2. The alleged perpetrator must be a caretaker; and
3. One of the allegations of abuse must be met.

This system works for lowans who meet these criteria, but not all older lowans fit nicely into these categories. Laws also exist if the older adult is a victim of domestic abuse or a victim of consumer scams or securities fraud. Additionally, criminal laws do make such actions as theft, assault, and neglect against the law. In each instance, it is the older lowan, their family member or advocate who is trying to figure out how to "fit" the type of abuse that was experienced into one of the current systems available for protection. Sometimes this can be done and other times the older adult simply gives up because it is just too much to figure out and no specific system meets the need.

The recommendations throughout this report are made with the goal of protecting older adults in this state from abuse, neglect and financial exploitation in a way in which there is no question as to where they should turn. The recommendations also allow for demonstration models which have shown their effectiveness to be expanded or more fully utilized to benefit all older Iowans.

Our hope is that these recommendations, which are a result of years of research, studies and the expertise of professionals and older Iowans, will be read and acted upon to ensure older persons in this state can grow old in a fashion that allows them independence, but when that independence is abused or exploited that there is a system of protection in place.

Current Situation

National Scope

Elder abuse is grossly under reported and under recognized across the nation. According to a 2011 study by the New York City Elder Abuse Center, only 1 in 23.5 cases of elder abuse is reported ... and for financial abuse, only 1 in 44 cases is reported (Under the Radar, 2011). The 2010 National Elder Mistreatment Study found 1 in 9 seniors report being abused, neglected or exploited in the past twelve months (Acierno et al., 2010); The study goes on to state: [T]he rate of financial exploitation is extremely high, with 1 in 20 older adults indicating some form of perceived financial mistreatment occurring at least one time in the recent past.

The National Center on Elder Abuse found that an incredible 90% of abusers are family members or trusted others, adding to the complexity of the situation (National Center on Elder Abuse, 1998). A common

misconception is that elder abuse perpetrated by a family member is a family problem and outside entities should not become involved. The consequences of elder abuse, neglect and exploitation, even within the family nucleus, are devastating not only to the abused, but to society.

In their 1998 article, *The Mortality of Elder Mistreatment*, Lachs, et al. found that abused seniors are three times more likely to die prematurely. In his March 2, 2011 recorded testimony before the Senate Special Committee on Aging in Washington, D.C., Mark Lachs reiterated the 1998 findings that elder abuse leads to illness and premature death. In addition, he testified that elder abuse victims are four times more likely to go into a nursing home. Nearly one in ten financial abuse victims turn to Medicaid as a direct result of the exploitation (Gunther, 2011). Victims of abuse utilize healthcare services at higher rates; those who had experienced abuse accessed the healthcare system two to two and a half times as often (Koss & Heslet, 1992).

In 2009, the MetLife Mature Market Institute reported financial exploitation cost American Seniors more than \$2.6 billion per year. The total U.S. household income is \$53.1 trillion dollars and a third of it is being held by seniors. A study done in Utah found that their seniors lost an average of \$1 million dollars weekly from thieves (The Washington Examiner, 2011).

Iowa Scope

Along with the rest of the nation, elder abuse continues to be under acknowledged, under identified, and under reported. Celene Gogerty, Assistant Polk County Attorney summarized Iowa's situation in her keynote address at the August 3, 2012 Elder Abuse Summit when she stated, "What is the

state of elder abuse in Iowa? It is an unspeakable epidemic.” (See Appendix B) This issue is compounded by the fact that Iowa does not have a specific elder abuse law. Iowa’s abuse law is actually a dependent adult abuse law. The Dependent Adult Abuse Laws are defined in Iowa Code Chapter 235B and assigns authority and responsibility to the Iowa Department of Human Services for abuse occurring in the community and in 235E to the Department of Inspections and Appeals for abuse occurring in long-term care facilities.

“What is the state of elder abuse in Iowa? It is an unspeakable epidemic.”
Celene Gogerty, Assistant Polk County Attorney
(August 2012 Elder Abuse Summit)

The constraints of the dependent adult abuse law means that many Iowans age 60 or older experiencing abuse, neglect and financial exploitation are left with very limited, if any, intervention and assistance. The following criteria must be met before Department of Human Services may respond:

- A)** The individual must be “dependent”- an individual age 18 or older who is unable to protect their own interests or unable to adequately perform or obtain services necessary to meet essential human needs as a result of a physical or mental condition which requires assistance from another;
- B)** The alleged perpetrator of the abuse must be the “caretaker”, which means that the individual perpetrating the abuse has the responsibility for the protection, care, or custody of the dependent adult as a result of assuming the responsibility voluntarily,

by contract, through employment, or by order of the court;

- C)** The incident must be one of the defined abuse categories: physical and sexual abuse, sexual exploitation, financial exploitation, denial of critical care or self-denial of critical care (neglect).

Below is a breakdown of dependent adult abuse reports during state fiscal year 2011.

Department of Human Services	Department of Inspections and Appeals
Reported: 5,980	Reported: 542
Accepted: 2,888	
Founded: 500	Founded: 150

In an effort to evaluate Iowa’s system, Iowa’s General Assembly approved approximately \$475,000 in 2001 to fund strategies for elder abuse detection, training and services. This effort became known as Iowa’s Elder Abuse Initiative Demonstration Projects and were located in 22 of Iowa’s 99 counties. This initiative allowed the Iowa Department on Aging to gather data, and develop protocols for the prevention and intervention of elder abuse, neglect and exploitation situations. Funding and authorization for the demonstration projects ended June 30, 2011.

The Elder Abuse Initiative focused on the prevention, intervention, detection, and reporting of elder abuse, neglect and financial exploitation by presenting elders with options to enhance their lifestyle choices. The objectives of the Elder Abuse Initiative were: 1) To respond to reported concerns regarding Iowans age 60 or older, who were at risk of, or experiencing, abuse, neglect and exploitation; 2) Coordinate community resources and provide a network

to respond to the needs of the targeted population; 3) Collaborate with and serve as a resource for case managers, healthcare providers, law enforcement, county attorneys, Department of Human Services evaluators, domestic violence agencies and community providers; and 4) Increase public local awareness on elder abuse issues through educational training. (See Appendix E)

Analysis Of Laws In Other States

The national review of state adult abuse laws was conducted via the American Bar Association research posted on the National Center on Elder Abuse Center website and Westlaw. A barrier in comparing state laws is the variety of definitions in adult abuse. Some states have dependent adult abuse laws, some have elder abuse laws, and still others have vulnerable adult abuse laws. The states of Arizona, Colorado, Illinois, Texas, and Utah all had a variety of components which would complement Iowa's existing adult abuse system and fills in where it is lacking. While it is difficult to compare states, it was clear through this analysis that there are states with stronger elder abuse laws and protections. (See Appendix F)

Analysis Of Current Iowa Laws

The review of current Iowa law began with identifying Iowa Code Sections that refers to or addresses adult abuse:

- 231.56A -Prevention of Elder Abuse, Neglect and Exploitation Program
- 231E – Substitute Decision Maker Act
- 235B – Dependent Adult Abuse Services – Information Registry
- 235E – Dependent Adult Abuse in Facilities and Programs

- 236 – Domestic Abuse
- 633.535 – Probate Code – Person Causing Death
- 633B – Powers of Attorney
- 700 Series – Criminal Offenses
- 729 – Infringement of Individual Rights
- 729A – Violation of Individual Rights – Hate Crimes
- 726.7 – Wanton Neglect of a Resident of a Health Care Facility
- 726.8 – Wanton Neglect or Nonsupport of a Dependent Adult

Findings

From this listing, a gap analysis was conducted and is illustrated in Diagram A. The shaded areas are the current Iowa Code Sections in place to address adult abuse, neglect and exploitation. The non-shaded areas are the gaps in protection identified by stakeholders, partners, community providers, and the aging network over the past several years and reiterated during the August 3, 2012 Elder Abuse Summit. (See Appendix G) The empty pieces to the adult abuse puzzle represent additional system improvements that will be revealed as Iowa's adult abuse system is enhanced and grown to meet the needs of older Iowans.

*“Financial exploitation
cost American Seniors
more than \$2.6 billion”
(MetLife Mature Market
Institute, 2011)*

Building an Elder Protection System¶

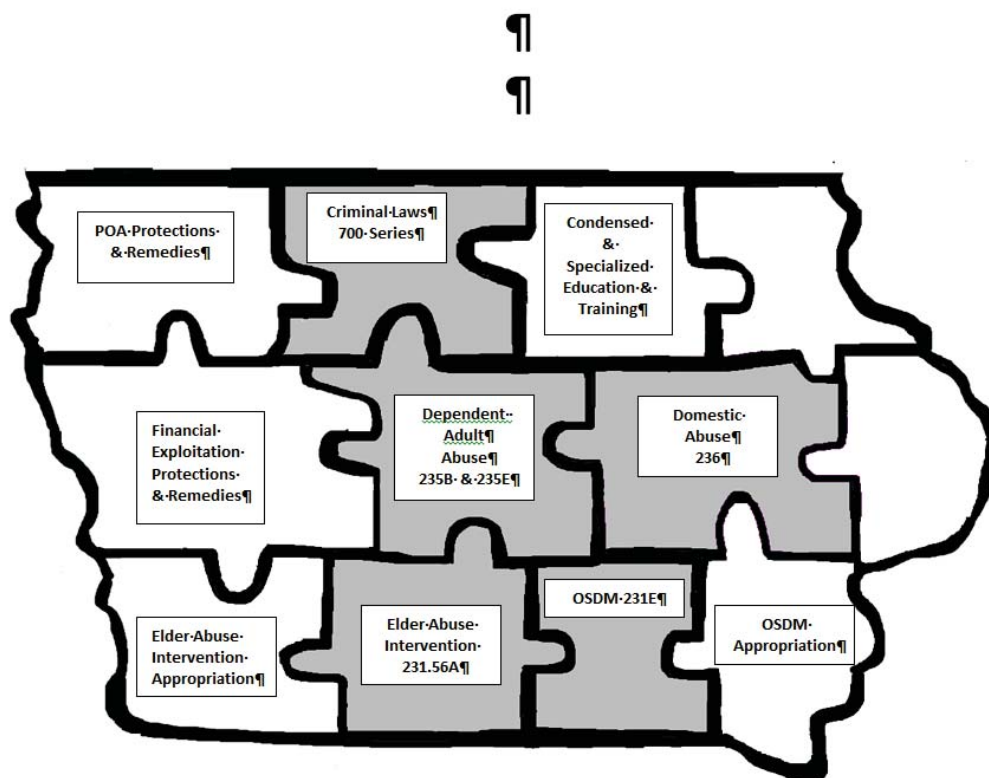


Diagram A

Additional Information & Research

The recommendations put forth by the Task Force build upon years of research, outreach and grassroots efforts regarding what is lacking in Iowa's adult abuse system. These efforts began in 1998 and include outcomes from the Elder Abuse Summit, Community Conversations, Elder Abuse Initiative Demonstration Projects, and Dependent Adult Abuse Forums as follows:

A) Elder Abuse Summit [August 2012]

(See Appendix G)

The Elder Abuse Summit was an opportunity for information and input regarding an elder abuse system for Iowa. Governor Branstad, legislators, experts and citizens gathered to identify system barriers and solutions to

improve the system for protection of Iowa's older citizens.

- 193 Participated
- 70 Entities Represented

Findings

- Current Laws Not Adequate
- Substitute Decision Making Inadequacies
- Inadequate Resources & Funding
- Public Awareness Needed
- Training For Professionals
- Lack Of Coordination / Response / Action

B) Community Conversations on Aging [Summer 2011] (See Appendix H)

During the summer of 2011, 646 Iowans attended the 16 Community Conversations

on Aging held throughout Iowa. It is reported in 2010 that Iowa's population reflected over 15% of persons aged 60 and over with those numbers projected to rise to 18% by 2020 and 23% by 2030. By 2030, Woods and Pool Economics, Inc. project that 88 of Iowa's 99 counties will reflect over 20% of their population aged 60 and over. While conversations are occurring on the federal level regarding Social Security, it is important to note the Social Security Administration reports Iowa recipients bring \$485,942,000 into the State of Iowa that support the economy with those numbers increasing as more individuals reach retirement age. Discussions held at the community forums identified three priority areas of unmet needs:

1. Develop a statewide system of protections and support services for older individuals facing abuse or financial exploitation, including a strong elder rights law;
2. Increase mental health services designed and delivered to older individuals throughout the state, particularly in rural areas; and
3. Increase the focus on lack of affordable, adequate and appropriate transportation services to allow better access to health and support services, particularly in rural areas

C) Elder Abuse Initiative Demonstration

Projects [FY2001 – 2011] (See Appendix E)

In 2001, the Iowa Legislature approved approximately \$475,000 to fund strategies for elder abuse detection, training and services in an effort to evaluate Iowa's fragmented system. This endeavor became known as Iowa's Elder Abuse Initiative demonstration projects. These projects were located in 4 of the 13 Area Agencies on Aging and available in 22 of Iowa's 99 counties. The Elder Abuse Initiative focused on the prevention, intervention, detection, and reporting of elder abuse, neglect and

exploitation by presenting elders with options to enhance their lifestyle choices.

Outcomes (FY2007 – 2011)

- 11,903 Total Referrals;
- 66% Had Mental Health Issues;
- 44.4% Experienced Financial Exploitation;
- 30.7% Experienced Denial of Critical Care by an Adult;
- Only an Estimated 16% of Elder Abuse Initiative Clients Fell into the Category of Iowa's Dependent Adult Abuse Definition

Findings

- Establish a definition of elder abuse separate from dependent adult abuse
- Create a statewide elder abuse intervention system
- Amend Iowa Code Chapter 235B – rejected referrals and referrals of individuals age 60 and older shall be referred to the local Area Agency on Aging
- Identify gaps in criminal law to address undue influence; non caretakers exploiting, neglecting and abusing individuals age 60 and older, legal remedies to address misuse of POAs (Elder Abuse Law)
- Create a statewide Office of Substitute Decision Maker

D) Dependent Adult Abuse Professional Forums & Survey [1998, 2003 & 2006] (Appendix I)

Forums were held across the state to hear from professionals working in the field about how the dependent adult abuse law and system worked. Opinions were sought on what was working well, what could work

better and what their suggestions might be for improvements and/or changes at the local and state level.

Results:

***1998 Grassroots Forums:**

- 16 Forums
- 316 Participants
- 71 Counties

Findings

- Education to Raise Awareness and Work Toward Prevention
- Education for Mandatory Reporters
- Systemic Changes Need to Occur
- Adequate Funding Needed

***2003 Follow Up Survey:**

- 1000 surveys were disseminated to the organizations or entities that were represented at the 1998 forums
- 301 surveys returned (30%)
- Results published in the Social Work in Health Care, Quarterly Journal, Volume 40, Number 2, 2004

Findings

- An Increase in Abuse Awareness is Needed
- Increase in Communication
- Continue to Collaborate with Community Partners to Build a Service Delivery and Protection System

***2006 Grassroots Forums**

- 9 Forums
- 212 Participants
- 52 Counties

Findings

- Clear and consistent guidelines and protocols for determining dependency, what constitutes abuse, negligence and gross negligence and the implementation of active multidisciplinary teams
- Expand the Elder Abuse Initiatives statewide which includes prevention, early intervention, support services, emergency shelters and specialized investigators
- Education and training for law enforcement, county attorneys, investigators, community providers, consumer directed attendant care (CDAC), direct care workers and stakeholders including prosecution and penalties
- Funding for
 - Public Awareness
 - Elder Abuse Initiative statewide; and
 - Office of Substitute Decision Maker.

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Appendices

HOUSE FILE 2387

AN ACT RELATING TO IMPROVEMENTS TO AND IMPLEMENTATION OF LAWS CONCERNING ELDER ABUSE BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. ELDER ABUSE REVIEW AND REPORT.

1. The department on aging shall work with the department of inspections and appeals, the department of human services, the office of the attorney general, and other affected stakeholders to conduct a comprehensive review of occurrences of and laws relating to the abuse, neglect, or exploitation of individuals in the state who are sixty years of age or older.

2. The review shall include all of the following:

- a. The current situation of abuse, neglect, and exploitation of individuals in the state who are sixty years of age or older.
- b. An analysis of laws in other states related to the abuse, neglect, or exploitation of individuals who are sixty years of age or older.
- c. An analysis of current state law addressing issues related to abuse, neglect, or exploitation of an individual who is sixty years of age or older and recommendations for improvements to existing law or implementation of other laws specifically addressing abuse, neglect, or exploitation of an individual who is sixty years of age or older.
- d. Other information the department on aging deems relevant.

3. The department on aging shall, by December 15, 2012, submit a report of its review including findings and recommendations to the governor and general assembly.

**Elder Abuse Summit
August 3, 2012
Celene Gogerty, Assistant Polk County Attorney**

Intro:

Thank you so much for inviting me to come speak to you about a very serious topic. First, I am going to talk about the problem of elder abuse. I will go over the relevant Iowa Law. I will talk to you about how we are responding to elder abuse day today. And last, I will talk a little bit about where we are going. Also, I want you to know that I am going to tell you several stories today. All of them are true and the only thing changed is the names of the parties involved.

Before we really get rolling this morning, I want you all to take a moment and imagine your ideal circumstances of your twilight years. Think about that, will you? Do you have that picture in your head? I'm picturing, living in my own home, lying on a wrought iron bed, with a warm homemade quilt, I'm wearing a crisp white nightgown. There is sunlight streaming in the windows, fresh cut flowers on the bedside table. I am surrounded by my adoring children, who wait on me hand and foot until I slowly and peacefully fade into that good night. That is probably pretty close to what most of you are picturing, right? Sounds perfect. Now keep that image in your mind while I tell you about Betty and Bill.

Betty and Bill were married for 69 years. They had one child, Lisa. A few years ago, time had caught up with Betty and Bill and they needed someone care for them. Lisa and her husband, John, a minister, agreed to look after Betty and Bill. Lisa and John moved in with Betty & Bill, as live in caretakers. This was the perfect retirement plan: Betty and Bill would stay in their own home, cared for by their family in their twilight years. Remember that picture you thought of when we got started? It sounds like that doesn't it? Here is the reality of what really happened.

You see, Lisa and John told Betty and Bill that they had to sign a power of attorney, which gave Lisa and John power over their finances. That's how it started and really, that doesn't seem that unreasonable on the surface. Lisa and John are taking care of everything; of course, they should handle the bills as well. Within six months though, Lisa and John had Betty and Bill sign over the house to them too. At that point, Betty and Bill were in no position to object. They relied on Lisa and John completely for their care. Both had medical conditions; Bill was in a wheelchair. They felt they had no one else to rely on or to intervene. They felt they could not speak up. So they signed.

In a matter of three years, Lisa and John plundered Betty and Bill's retirement savings. Betty and Bill were not rich, by any stretch of the imagination. Bill had retired from a city job and they had a modest home on the south side of Des Moines. But they had managed to save over \$100,000 in their bank account and their house was paid for. And like that, it was all gone. Lisa and John wanted a better life, but they couldn't or wouldn't earn it. So they took it from Betty and Bill. Lisa and John went out to eat, went to movies, and went on an elaborate vacation on Betty and Bill's dime. The vacation involved Linda and John taking their entire extended family to Disneyworld.

You might be thinking, it is hard work caring for elderly, dependent parents. They are entitled to some compensation. I would say that may be true, if they actually took care of Betty and Bill.

Remember that vacation to Disneyworld? Well, Lisa and John took *almost* their entire family. They left out some people. Can you guess who? All together now, Betty and Bill. They didn't take Betty or Bill to Florida, even though they couldn't care for themselves. And they also didn't make arrangements for anyone else to take care of them. So Betty and Bill were left to fend for themselves that entire time.

To make matters worse, Linda and John didn't take care of them even when they were there. For over the last year of Lisa and John's spending spree, neither Betty nor Bill was allowed out of the house. Not to go out to eat or go on vacation, or even see a doctor. For over a year. And due to their medical conditions, they needed supervision and care, but for the most part, Lisa and John were out spending Betty and Bill's money.

Finally, a neighbor realized that she hadn't seen Betty nor Bill for a long time. She became so concerned that she called the Department of Human Services. When the DHS worker arrived, she found Betty and Bill home alone. Lisa and John arrived a short time later and the DHS worker started to try and figure what was going on. Bill, due to his medical conditions, was not able to speak. Betty's cognitive abilities were intact. However, Betty

was too frightened to speak in front of Lisa and John. Instead, Betty passed notes to the DHS worker, begging for help. After all, it had been three years since the exploitation and neglect had started.

Betty and Bill had to go into a nursing home, as there was no one appropriate to care for them. They didn't get to pick the facility, as their money was all gone and they had to go on government assistance. But they got good medical care, food, and were able to see family and friends they hadn't seen in years. And they were no longer prisoners in their own home, unable to speak up.

So what is the state of elder abuse in Iowa? It is an unspeakable epidemic. It is unspeakable that people could commit such despicable crimes. It is unspeakable that perpetrators are usually beloved family members. It is unspeakable that these crimes are woefully underreported. It is unspeakable that the victims are so vulnerable. It is unspeakable merely because these victims are often literally unable to speak.

How common is Betty and Bill's story in Iowa? Honestly, we really don't know. According to the US Department of Justice, about .4% of US seniors reported being a victim of any type of crime. However, studies indicate that about 7 to 8 percent of the senior population has suffered elder abuse. Assuming that all of those reported crimes were elder abuse (and we know they weren't), but assuming they were, the actual rate of abuse is 17.5 times the amount of crimes reported. We know that in 2011, there were 3434 mandatory reports made to the Iowa DHS for dependent adult abuse. Assuming they were all seniors (and we know they weren't) but assuming they were, that would be less than one percent of the Iowa senior population that was alleged to have been abused.

The state of New York did a groundbreaking study of elder abuse where they interviewed thousands of seniors about whether they had been subject to elder abuse. They found that the rate of actual abuse was 24 times the amount reported. 24 times.

This means we are missing thousands of cases here in Iowa. Thousands of Iowa seniors are silently suffering.

This is an unspeakable epidemic.

And why don't seniors report the abuse themselves? One study found that the victims are ashamed and afraid and they don't know how to get supportive services. That makes sense to me. How hard must it be for a person to admit they have been had by their own child, they have been neglected by their sister, that they have been assaulted by their grandson? How embarrassing it must be to realize and tell someone else that they have lost cognitive ability? How terrifying is it to be threatened with being placed in a nursing home? How lost and alone would it be if you felt you had nowhere to turn for help? And quite frankly, some victims are cognitively unable to even know what is happening to them.

Here is another factor. The perpetrators are often people the victims' love. This is their flesh and blood who did this. They don't want them in trouble, in jail. What a terrible conundrum in which they have been placed.

What if Betty and Bill had only seen the doctor? Betty could have told her doctor. Her doctor was a mandatory reporter. Surely, the doctor would report it. The statistics indicate otherwise. A study in 2005 of primary care physicians revealed that about 75% of them were not concerned about elder abuse and that 2/3 had no cases of abuse in the past year. I am not here to demonize doctors, quite frankly, a lot of other professions are not reporting it either. Mandatory reporters are required to be trained and I know that they comply and they use the approved curriculum. And that is a good thing. But I think we need more. I have trained physicians in the past about elder abuse. When I got feedback from them, it was interesting. The doctors' biggest request was for actual medical training on recognizing the medical signs of abuse. As my entire medical training consists of watching two seasons of ER, I'm really not qualified. But there is a need, a desire by treating physicians to get it right, to protect their patients. We just need to address it. That is just one example of professionals that are calling for more training and more specific training in their fields on elder abuse.

I want to tell you about another couple, Frank and Vicky. Frank and Vicky, another couple married for decades. Like Betty and Bill, they had one child, a son named Danny. Frank and Vicky also gave Danny access to their financial affairs, via a power of attorney document. And like Lisa and John, Danny misused his authority to access his parents' money for his own personal gain. Danny couldn't hold a job but he wanted to remodel his house. So he stole the money from his parents. Conservatively, he stole over \$40,000. By the time law enforcement and DHS became involved, Vicky was in poor physical health and Frank was suffering from dementia and they both needed nursing home care. Vicky died while the criminal case was pending against Danny.

Sometimes, I hear defendants say that they were just taking what they would inherit anyway. And Danny was no exception. So what's the harm?

A study found that seniors that suffer *mild* abuse have a 300% increased risk of dying compared to seniors who have not been abused. Another study found that abused seniors are four times as likely to be put in a nursing home.

This also had a huge financial impact. Frank, once again, he had to rely on government assistance as most of his money was stolen.

I met with Frank several times at the nursing home. Frank clearly had memory issues, but he knew what Danny had done. I could see his pain. His face would crumple and he would look to the floor when he talked of Danny's stealing. This crime had a profound impact on Frank and he died within a few years, penniless.

When Danny was sentenced to pay over \$43,000 in restitution to his father, Danny paid as little as he possibly could. When Frank later died, Danny was able to wipe out the entire debt because in Iowa, you can still inherit from someone, even if you steal them blind before they died.

Pop Quiz:

What is the most dangerous document? This document is so dangerous, I call it "legal dynamite". I will give you a hint: that is, I have already given you a hint.

A power of attorney. It is legal dynamite because if it used correctly, it is incredibly powerful and useful. If not, it blows up in your face. But unlike actual dynamite, the use of a power of attorney document is not really regulated.

Danny, as well as Lisa and John, were able to steal using power of attorney documents.

One of the problems is that, for an unscrupulous person, a power of attorney document turns into a blank check. It doesn't matter to them that they have fiduciary duties. It doesn't matter that the Courts have said that you can't engage in self-dealing, that you have to act in good faith. Because either they don't know of their fiduciary duties or they don't care.

Giving them the benefit of the doubt, how would they know? Most of the fiduciary duties are not spelled out in the Iowa Code, but in court rulings. A person acting via a power of attorney document is not required to acknowledge their obligations. And no one is telling them. The general population is not being informed on how these documents should and should not work. Attorneys are guilty of it too. And so the unspeakable epidemic continues.

And the studies indicate that financial exploitation of seniors is the most common type of elder abuse. How much is being stolen? Don't know. The total US household income is \$53.1 trillion dollars and a third of it is being held by seniors. In 2009, the MetLife Mature Market Institute reported financial exploitation cost American Seniors more than \$2.6 billion per year. That New York state study found that the amount of actual financial exploitation was forty-four times the rate of reported cases. A study done in Utah found that their seniors lost an average of \$1 million dollars weekly from thieves. It's unspeakable.

Now, I want you to think about an important senior in your life. Picture them in your head, how much you love them, what is special about them. Does everyone have that senior in their head? Keep that in mind for a moment.

The National Adult Protective Services Association found that the typical victim of elder financial exploitation was a female, aged between 70 and 89, frail and cognitively impaired. Does that sound like anyone you know? Your mother, your grandmother, your aunt, your neighbor?

Who is committing these crimes? MetLife found that most of the thieves were family members and caregivers. The Linda and Johns of this world.

But it is not just financial exploitation. Iowa seniors are being abused and neglected on a daily basis.

My very first case as an elder abuse prosecutor involved a certified nurse assistant who deliberately tormented two elderly and medically fragile residents. She repeatedly cranked up the air conditioning up on these ladies when they were only partially dressed and cold. They were shiver and suffer until, as one person described it, they would turn gray. One of these ladies had previously had eye surgery and suffered from dry eyes, a fact this CNA knew. The CNA turned a fan into her eyes. I remember the testimony of one of the witnesses; that she put her hands up, but couldn't speak. Even worse, the CNA would laugh about what she had done with another nurse.

The victims, due to dementia, were unable to speak up. They suffered greatly as no one spoke for them when the abuse first started happening. It took a long time for it to get reported.

A lack of reporting by mandatory reporters is a real problem. A 2009 study published by the University of Iowa College of Medicine involved interviewing nursing home employees. 35 percent of the interviewed employees stated they did not report cases of suspected abuse. Over a third of them did not speak up.

We all know of abuses that occur in health care facilities. We read it in the papers and see it on the news. What isn't commonly known is how much abuse and neglect occurs in the home. That really shouldn't be surprising when, according to the National Adult Protective Services Association, 95% of seniors live in at home. A study found that 47 percent of dementia patients, living in their own homes, suffered from abuse. This study, however, didn't even look at financial exploitation. If we throw that in, it is not an exaggeration that more dementia patients in the home will be abused than not.

In 2010, a worldwide study of dementia was released. The cost to treat dementia in at that time was \$600 billion dollars. The study found that the amount of people with dementia was likely to double every twenty years. To put this in perspective, the report stated that if dementia care were a company, it would be the largest company in the world.

Alzheimer's disease and other forms of dementia place caregivers under a tremendous amount of stress, both emotional and financial. The Alzheimer's Association calculated that the value of the time caregivers spend tending to their family members afflicted with Alzheimers in 2011 was \$1.8 trillion dollars nationwide. We shouldn't be surprised when there isn't funding for respite care or other supportive services that abuses of our seniors are occurring.

But isn't always just about caretaker stress. There are some people who should never be taking care of our seniors. In 2000, professors at the University of Iowa studied Iowa community characteristics associated with elder abuse. They found that the strongest risk factor for reported elder abuse cases was also child abuse.

In 2009, Gladys was living in her own home. She was starting to show signs of dementia in the summer, so her adult grandson, Gary, moved in to care for her. In October, Gladys was taken to the hospital in a terrible state. She was emaciated, malnourished, dehydrated and as one nurse put it, skin and bones. She had dried feces in her hair. Her entire body was infested with lice and fleas. The ER doctor later testified that you could see the bugs moving on her skin from across the room. It was so bad that medical staff had to shave Gladys' head. Anyone who wanted to see Gladys had to put on a hospital gown so they wouldn't get infested.

When hospital staff asked Gary how long Gladys had been like this, Gary said she hadn't left the couch in five or six days. Gary hadn't brought her food or drink or helped her to the bathroom in all of that time. Several family members had been in Gladys' home during those five or six days and no one called for assistance until Gladys was extremely ill.

Gladys died eleven days later.

I wish I could say that this was my only case involving neglect, but I have had several others just as bad, if not worse.

Abuse and neglect are unspeakable crimes, but we can't ignore the problem of self-neglect. We have had many, many cases where a senior who cannot live safely in their home anymore, usually because of dementia, has no one to make decisions for them. Often times, they have no family members left, so they have no power of attorney document or person to act as guardian. They didn't have the capacity to consent to medical treatment or to take care of their finances.

In those cases, DHS has been forced to find a volunteer to act as guardian and conservator. Our DHS workers practically pound the pavement, desperately looking for volunteers and they are always in short supply. We have one volunteer who is a guardian or conservator for 37 people in Polk County alone. If we didn't have him, I honestly don't know what we would do. Many hoped that the State Office of Substitute Decision Maker would fill that void. However, it was closed up before it could even get going.

And it is not just self-neglect where volunteers are needed. Often times we need a guardian and conservator for seniors who have been financially exploited. It is not unusual that the Lindas and Johns of this world to have left their parents in a financial mess. I had a case where money was left in trust with the son to care for his mother, June. June had advanced Alzheimer's disease and was unable to speak. Her son stole \$213,000 from her. He left June with a relatively small annuity with a monthly payout of \$7000. However, her nursing home cost \$9000 a month if she were to pay privately. But with the \$7000 payout, she didn't qualify for government assistance. So June was being threatened with discharge from her nursing home but there was no appropriate family member to take care of her. It was only after a lot of begging and pleading that the insurance company took pity on June and released her from the annuity contract. It is this type of case that requires an astute conservator, and quite frankly, there are not that many volunteers who could handle such complicated financial matters. Without such volunteers, there is no one to speak for people like June.

The other challenge we face is the lack of suitable placements. We have had several situations where a vulnerable senior wasn't safe in their home but there wasn't an immediate nursing home bed available. Where do they go? I don't have a good answer for that.

Where is Kris Stroeh? I am picking on her for a couple of reasons. First of all, she has been threatening to heckle for the last week. So I am pre-emptively calling her out. Kris is a DHS services worker. As part of her duties, she coordinates services for dependent adults, but honestly, that description does not do what she does justice. Kris has to be a magician in getting services for her clients, because the Iowa Code specifically does not allocate money for those services. She is also finds those placements, finds volunteer guardians and conservators, and quite frankly, no one does it better. People often ask me what for my opinion because they say I am out in the trenches. I think a more accurate description is that I am out on the battlefield, with a really good view of the action. But its people like Kris who are out in the trenches. If you really want to know what is going on, you need to ask Kris. You are going to hear later for Detective Danny Metzger. Danny is out in the trenches. Talk to Kris and Danny. Listen to them. Listen to them speak.

This is not hopeless or a lost cause. There are many tools at our disposal that, if used, can start to address this unspeakable epidemic.

First of all, we need to understand there are essentially two statutory approaches to these problems: elder abuse laws and dependent adult abuse laws, or a combination of both. The main difference is that an elder abuse law applies to all adults who are seniors. A dependent adult abuse law applies to only those adults who are impaired and need protection.

In Iowa, we use a dependent adult abuse approach. Our dependent adult abuse laws are in Chapter 235B and Chapter 235E. 235E allows the Division of Inspection and Appeals to investigate dependent adult abuse in health care facilities. If they find violations, they can go after the facilities administratively. DIA also goes after Medicaid fraud as well. 235B allows the Department of Human Services to investigate abuses everywhere else. If they find abuse has occurred, they can put the perpetrators in a registry. DHS also has been given other, lesser known powers. DHS can petition the court to ask for a protective order on behalf of their dependent adults who have don't have capacity to make decisions for themselves. If a dependent adult is not safe in their home, they can get them to a placement where they are cared for properly. If someone is stealing from them, they can get an order keeping the thieves at bay. Essentially 235B emergency orders are lifeboats, keeping people safe until guardians or conservators are appointed. Lastly, 235B gives us criminal charges and penalties.

So what is a "dependent adult" and "dependent adult abuse"? First of all, you need to know that these definitions in 235B and 235E are slightly different. Don't ask me why.

In any event, basically, a dependent adult is an adult, who is unable to protect themselves or obtain services or meet their own needs as a result of a physical or mental condition which requires assistance from another.

So how do we figure out who is dependent? What factors apply and what ones don't?

One factor is time. What I mean, is that you can be dependent for five minutes, five days, or fifty years. If you get into a car accident and are unconscious, you are a dependent adult as long as you can't meet your own needs. That may only last a short time, but you are dependent for that time. That way you are protected when you are vulnerable. The classic example of this is the 1981 assassination attempt against President Reagan. When Reagan was shot and in surgery, there was a big to-do about who was in charge. And that was because someone had to be able to make decisions for the country. President Reagan was dependent during that time. He recovered and went back to being president. Time.

Another factor is situational. What that means that a person may or not be dependent, depending on the situation. Let me give you an example. I had a case involving a gentleman who was paralyzed from the chest down but mentally completely fine. If he had access to a phone, brought his food and water, he was not dependent. The problem was that his caretaker, his son, would take the phone, and then leave him without food and water, sitting in his own waste. In that situation, he was dependent. Situational.

I often hear that to be dependent you have to lack mental capacity. That is not what the code says however. You have to have a mental or physical condition.

There is one factor that I haven't mentioned. Age. This is not an elder abuse law, it is dependent adult abuse law. Just because a person may be a senior does not make them dependent.

What is dependent adult abuse? It's what you think: causing injury, neglect, sexual assault and exploitation, and financial exploitation.

So we have these laws in effect, but I will tell you that it is not enough. DHS and DIA can only investigate abuse of a dependent adult for those specified crimes, not for any other crimes or for any other victims. This is not an elder abuse law. It does not provide additional protections for all seniors, just the ones who fit the definition of dependent. However, just because a senior is independent, doesn't mean they are not susceptible to abuse.

They also can only act in cases where the abuse is perpetuated by a caretaker or the senior is self-neglecting. A dependent senior who is hit, punched, sexually assaulted, or financially exploited by anyone else legally cannot get that extra help from DHS or DIA under 235B or 235E.

One type of situation is consumer fraud. I had a case where my victim was a senior with dementia living in his home. An unscrupulous handyman offered to fix a hole in the roof. The handyman, clearly a grifter, got paid in full up front for the repair. However, he kept going back and kept convincing my victim to keep writing him checks. My victim overpaid by thousands to the handyman. And the "repair" was lousy. He was not covered by 235B or 235E.

What about the case loads of social workers? UP, UP, and away.

In 2011, Polk County DHS petitioned for 40 protective orders on behalf of abused or neglected dependent adults. We are just over half way through 2012, and there have been 50 petitions on file already this year. We are doubling our numbers. Since 2009, I have personally prosecuted around 75 cases for this type of crime with no end in sight. The unspeakable epidemic continues

So where do we go now? In 2010, the percentage of seniors (65+) in Iowa was about 15%. It is predicted that in 2030, the amount of seniors will increase from 15% to 22.5%. Right now, we are 5th in the nation for the percentage of seniors. We can't ignore this any longer.

When I was first asked to speak today, I said sure. I can talk about elder abuse all day long. But when I started working on this speech, I struggled. I was asked to speak about the state of elder abuse in Iowa. And what else could I say, except that it's bad. It's really, really bad. It is unspeakable. How could I speak for an hour on crimes that should not be happening. I am a seasoned prosecutor, have been doing this job for 18 years. I have prosecuted everything from traffic tickets, to fishing violations (after one particularly ridiculous case, I got called the Bass Master for a while), to drugs, to murder, and anything in between. I think I have seen everything and then one of my elder abuses cases come along and I am stunned. How can these things happen? Didn't we used to look out for one another? Isn't anyone checking on vulnerable seniors? How do you let your grandmother literally rot away in front of you? How do you steal from your father that raised you? I don't get it. It is unspeakable.

It doesn't have to be this way. It is time you use your voices to speak up. What can you do to combat elder abuse? Prevent it from happening in the first place? Help people when they need it most? You may be thinking, that you are only one person and you only have a small part to play. But if there is one thing that I have learned about addressing elder abuse, that every member of the team matters. Everyone brings something to the table and it is only when we work together, speak with one voice, that we can make real change happen.

This is not hopeless. I want to tell you one more thing about Frank. Frank was the gentleman whose son, Danny, stole \$43,000 and then had his debt wiped out when Frank died. Let me tell you how we were able to help Frank and successfully prosecute Danny. The bank, suspicious of Danny, spoke up and reported it. DHS and the Des Moines Police Department worked together to investigate. DHS was able to get the protective services in place and DMPD was able to get Danny stopped before he stole everything. When the detective confronted Danny, Danny had a check from Frank's account for \$50,000 in his pocket. DHS was able to get an order to stop payment on that check. If they had not done so, that money would have been gone. We all worked as a team to protect Frank. When I visited Frank, he thanked me. But it wasn't me who did all the hard work. It was Detective Tarry Pote. It was DHS worker Kris Stroeh. It was the bank employees at Wells Fargo. It was my legal assistant, Laurie Bence, who organized the financial records into spread sheets so it made sense. It was my boss John Sarcone, who has had the wisdom to dedicate staff to fight elder abuse for years. It was a team that spoke for Frank.

It is your turn to speak. What will you say?

ELDER ABUSE LAW SUGGESTIONS TO ADDRESS FINANCIAL EXPLOITATION CHANTELLE SMITH, ASSISTANT ATTORNEY GENERAL

DEFINITIONS

"Capacity to consent" means that an eligible adult has sufficient understanding to make and communicate responsible decisions regarding the eligible adult's person or property, including whether or not to accept support and services offered by the department.

"Deception" means a misrepresentation or concealment of a material fact relating to services rendered or to the disposition or use of property intended to benefit an eligible adult. [In addition to its meaning as defined in ***, a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the eligible adult or to the existing or pre-existing condition of any of the property involved in such contract or agreement; or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit the eligible person to enter into a contract or agreement.]

"Exploitation" means a person who:

1. Stands in a position of trust and confidence with an eligible adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, an eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive an eligible adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the eligible adult;
2. Knows or should know that the eligible adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the eligible adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the eligible adult;
3. Without authorization uses an eligible person's identifying information or documents, as prohibited in Iowa Code section *****,
4. Commits theft in violation of Iowa Code section *****, or
5. Stands in the position of a fiduciary of an eligible adult and substantially fails or neglects to fulfill his or her responsibilities.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to an eligible adult from a personal or joint account;
4. Intentional or negligent failure to effectively use an eligible adult's income and assets for the necessities required for that person's support and maintenance; or
5. Undue influence of an eligible adult.

"Intimidation" means the communication by word or act to an eligible adult that the eligible person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, financial support, or socialization with family or friends, or will suffer physical violence.

"Lacks capacity to consent" means a mental impairment that causes an eligible adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept support and services.

"Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts

performed or false or misleading statements made with the intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the eligible adult.

"Obtains or uses" means any manner of:

- (a) Taking or exercising control over property;
- (b) Making any use, disposition, or transfer of property;
- (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or
- (d) Conduct otherwise known as theft, stealing; larceny; embezzlement; misapplication; misappropriation; conversion; obtaining money or property by false pretenses, fraud, or deception; or
- (e) Other conduct similar in nature.

"Position of trust and confidence" with respect to an eligible adult means the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage of the eligible adult;
- (b) Is a joint tenant or tenant in common with the eligible adult;
- (c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, conservator, trustee, representative payee, attorney in fact, and attorney at law; or
- (d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the eligible adult's funds, assets, or property.

"Undue influence" means when a person uses or knowingly assists or causes another person to use that person's role, relationship, or power to exploit the trust, dependency, or fear of an eligible adult, or uses or knowingly assists or causes another person to use that person's role, relationship or power to deceptively gain control over an eligible adult's decision making process.

Suggested Code Changes:
Provided by: Celene Gogerty, Polk County Attorney's Office

- 1) Add a new section to Chapter 633B (Powers of Attorney) to include a provision that when an attorney-in-fact transfers any of the principal's property or resources in such a way that does not financially benefit the principal, that transfer would be presumed fraudulent, unless a specific provision was made in the POA to allow such transaction.**

Abuse of Power of Attorney documents is a huge problem; POA is, by far, the most used vehicle for exploiting elders and dependent adults in my case load. As an attorney-in-fact is a fiduciary on behalf of a principal, they have power over the principal and this increases the possibility of undue influence.

- 2) Add a new section to Chapter 633B to require that all attorneys-in-fact sign a notarized acknowledgement of their fiduciary duties for a POA to be considered valid. Most people are not aware of their fiduciary duties and I think it would be beneficially to put them on notice.**

I cannot tell you how many times I have heard from defendants that "I am the power of attorney and I can spend the money however I want". This is not true, as the attorney-in-fact has fiduciary duties. Those duties include: Act in good faith on the principal's behalf; avoid any act of self-dealing; only act as authorized by the contract; and the attorney-in-fact must provide all material facts to the principal. *Kurth v. Van Horn*, 380 N.W.2d 693 (Iowa 1986); *Sinnard v. Roach*, 414 N.W.2d 100 (Iowa 1987); *Estate of Crabtree*, 550 N.W.2d 168 (Iowa 1996); *State v. Flax*, 2002 WL 100677 (Iowa App.)

- 3) Define "informed consent" for purposes of 235B.2(5)(a)(1)(c) (dependent adult abuse financial exploitation). Currently, it is not defined but the State has to prove that the financial transaction was without the "informed consent" of the victim. I would propose a definition similar to the informed consent requirements for medical procedures and in the ethics rules for attorneys with clients with conflicting interests. Mostly, I think it needs to be in writing.**

Iowa Code Section 147.137 defines "informed consent" in the medical arena. Iowa Rule of Professional Conduct 32:1.0 also gives a definition of "informed consent".

- 4) Amend 633.535 (statute that denies an inheritance if you cause the death of the decedent) to also include an inheritance bar if you financially exploit the decedent. I have had several cases where an heir has stolen the victim blind, doesn't pay restitution or pays the bare minimum, and then their restitution obligation is wiped clean when the victim dies. It seems grossly unfair and I believe such a ban would prevent a lot of financial exploitation if they know they won't inherit if they steal.**

To: Elder Abuse Task Force
From: Josephine Gittler
Date: 10/23/2012
Re: Recommendations Proposal

I have set forth below some proposed recommendations regarding power of attorney (POA) abuse and conservator abuse resulting in financial exploitation of the elderly. The proposed recommendations are based on research being conducted with respect to power of attorney abuse and conservatorship abuse which I and the staff of the National Health Law and Policy Resource Center at the University of Iowa College of Law are conducting. At a meeting last August with Director Harvey and her staff, it was agreed that Resource Center would undertake this research and then write a report describing the results of this research for the Iowa Elder Abuse Task Force. I and Center staff have completed a literature review and a 50 state statutory survey and are in the process of surveying "key informants" about POA abuse and conservatorship abuse in Iowa.

I. POWER OF ATTORNEY ABUSE

Power Of Attorney Act, Iowa Code, Chapter 633B

Proposed Recommendation One

The Iowa General Assembly should consider amending the Iowa Code, Chapter 633B and adopting the provisions of the Uniform Power of Attorney Act furnishing safeguards against POA abuse including provisions for prevention of abuse, the detection of abuse and the redress of abuse.

Comment:

Iowa Code Chapter 633B gives legal recognition to powers of attorney under which the principal may give an agent the authority the financial affairs of the principal and make financial decisions for the principal. However the Iowa Code provisions with respect to POAs do not include safeguards against POA abuse by agents.

The Uniform Power of Attorney Act (UPOAA), referred to in the proposed recommendation, was promulgated by the Uniform Law Commission. Commission members are legal experts appointed by state governments to research, draft and promote enactment of state laws. The UPOAA has thus far been adopted in 13 states, including Iowa's neighboring states of Nebraska and Wisconsin. Other states have adopted provisions similar to those of the UPA.

The UPOAA contains numerous safeguards against POA abuse. (A list of these provisions is attached). The UPAA addresses the problems about which Celene Goherty has expressed concern in her e-mails. The AARP Public Policy Institute report to which Anthony Carroll mentioned in his e-mail advocates the adoption of the UPOAA.

It should be noted that the Probate Section of the Iowa Bar Association has established the Uniform Power of Attorney Act Committee to review the UPAA and make recommendations regarding its adoption by the General Assembly. (I and Paige Thorson are members of the committee).

Proposed Recommendation Two:

The Iowa General Assembly should consider amending the Iowa Code, Chapter 633B to provide that a POA must be registered when the principal becomes incapacitated and that the agent must account to a 3rd party when the principal becomes incapacitated.

Comment:

At the present time in Iowa, there is no registration of a POA once a principal becomes incapacitated and an agent is not required to make any kind of report regarding their financial transactions to a third party in the event of the principal's incapacitation; and there is no statutory procedure by which a family member, friend or other interested party who suspects that the agent might be misusing the POA, can seek court review directly. This lack of transparency and oversight makes it difficult to prevent and to detect and remedy such abuse. The proposed recommendation addresses these problems in order to facilitate both the prevention of POA abuse and the detection and remedying of POA abuse.

CIVIL ACTIONS AND REMEDIES FOR POA ABUSE**Proposed Recommendation:**

The General Assembly should consider amending the Iowa Code to provide for a specific civil action against an agent for POA abuse and authorizing remedies such as punitive damages under certain circumstances, attorney's fees, and court costs and allowing a cause of action to survive after the victim dies.

Comment:

At the present time in Iowa there exist major barriers to the pursuit of civil actions by elderly persons victimized by POA abuse and other forms of financial exploitation. Several states have enacted laws containing provisions such as those recommended in order to reduce these barriers. It should be noted that the UPA provides for civil liability of the agent for POA abuse.

CIVIL PROTECTION/RESTRAINING ORDERS**Proposed Recommendation:**

The General Assembly should consider express statutory authorization of civil protection/restraining orders that allow under designated circumstances the freezing of an elderly person's assets or the encumbrance of transactions involving his or her property so as to prevent loss of assets due to POA abuse by an agent or other forms of financial exploitation.

Comment:

Iowa Code, Chapter 235B authorizes courts to issue protective orders but only in cases of "dependent adult abuse" as defined by the Code and only the Department of Human Services can file a petition for such an order. However, the Iowa Code does expressly authorize civil protection/restraining orders to prevent loss of elderly persons, assets or property due to POA abuse or other forms of financial exploitation. Several states have enacted such legislation.

CRIMINAL ACTIONS AND SANCTIONS FOR POA ABUSE

Proposed Recommendation:

The Iowa General Assembly should consider making POA abuse and other forms of financial exploitation of an elder person a specific criminal offense. The Iowa General Assembly also should consider expressly providing for enhanced sentencing of a person convicted of a criminal offense against an elderly person involving POA abuse and of forms of financial exploitation.

Comment:

Iowa Code, Chapter 235B makes “dependent adult abuse” a criminal offense. Dependent adult abuse is defined as including “[e]xploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.”

However, the Iowa Code does not expressly define POA abuse and other forms of financial exploitation of an elderly person as a criminal offense. Nor does the Code expressly provide for enhanced sentencing of a person convicted of a criminal offense against an elderly person involving POA abuse and of forms of financial exploitation. A number of other states have enacted laws such as the proposed recommendation.

II. CONSERVATORSHIP ABUSE

Proposed Recommendation:

The General Assembly should consider amending Iowa Code, Chapter 633 so as to require background checks of prospective conservators [and guardians] in order to determine if they have been convicted of a crime that would disqualify them from serving as a conservator {or guardian}.

Comment:

Iowa, unlike the majority of states, does not conduct background checks of prospective conservators [and guardians] to determine if they have disqualifying criminal convictions. As a result the court may currently unknowingly appoint an individual as a conservator [or guardian] who has a disqualifying criminal record.

Proposed Recommendation

Volunteer guardianship /conservatorship monitoring and assistance programs should be established to assist courts in carrying out their traditional function of monitoring guardianship/conservatorships, and in providing needed assistance to individuals serving as guardians/conservators.

Comment:

The Iowa code contemplates the ongoing court monitoring of guardianship/conservatorships in order to assure that incapacitated persons, who are wards, are receiving appropriate care and protection. Unfortunately courts, including Iowa courts, lack the resources to perform fully their monitoring function and provide needed assistance to guardians/conservators. In other states programs which recruit and train volunteers to act as “the eyes and ears of the court” for this purpose have proved highly successful and could be replicated in Iowa.

UNIFORM POWER OF ATTORNEY ACT: SAFEGUARDS AGAINST POWER OF ATTORNEY ABUSE

(This is an excerpt from Linda S. Whitton, Planning for incapacity with powers of attorney, a paper prepared for the *Colloquium, The Aging Population, Alzheimer's and Other Dementias: Law and Public Policy* at the University of Iowa College of Law, Spring 2012.)

A. Statutory Provisions for the Prevention of Abuse

1. Express language is required to grant authority to:
 - A. create, amend, revoke, or terminate an inter vivos trust;
 - B. make a gift;
 - C. create or change rights of survivorship;
 - D. create or change a beneficiary designation;
 - E. authorize another person to exercise authority granted to the agent;
 - F. waive the principal's right to be a beneficiary of a joint and survivor annuity;
 - G. exercise fiduciary powers that the principal has authority to delegate; and
 - H. disclaim or refuse an interest in property.[UPOAA § 201(a)]
2. Unless otherwise provided, an agent who is not the principal's ancestor, spouse, or descendant may not exercise authority to create in the agent or in anyone to whom the agent owes a legal obligation of support, an interest in the principal's property. [UPOAA § 201(b)]
3. Unless otherwise provided, all agents are constrained from self-dealing by clearly articulated fiduciary duties. [UPOAA § 114]
4. Unless otherwise provided, a spouse-agent's authority terminates upon the filing of an action for dissolution or annulment of the marriage to the principal, or their legal separation. [UPOAA § 110(b) (3)]
5. A person may refuse an otherwise valid power of attorney if the person in good faith believes that the principal may be subject to abuse by the agent or someone acting in concert with the agent. [UPOAA § 120]

B. Statutory Provisions for the Detection of Abuse

1. A governmental agency charged with protection of the principal (*e.g.*, Adult Protective Services) may request agent disclosure of transactions conducted on behalf of the principal. [UPOAA § 114(h)]
2. Any person who demonstrates sufficient interest in the principal's welfare may petition the court for review of the agent's conduct. [UPOAA § 116(a)]

C. Statutory Provisions for the Redress of Abuse

1. An agent is liable for the amount required to restore the principal's property to what it would have been had the violation not occurred and for reimbursement of attorney's fees and costs paid on the agent's behalf. [UPOAA § 117]
2. Remedies under the Act are not exclusive and do not prevent redress under other statutes that address financial exploitation. [UPOAA § 123]

**Iowa Elder Abuse Initiative Demonstration Projects
Executive Summary
September 26, 2012**

Introduction:

Elder abuse, neglect and financial exploitation is grossly under reported and under recognized across the nation; and Iowa, unfortunately is no different. In 1993, the Iowa Department on Aging created an elder abuse committee to look at the issues of elder abuse. For many of these years, this group of professionals reviewed laws, policy and the responses or lack of responses of the systems which were developed to protect older adults. The results of these efforts lead to problem statements, reports, proposed legislation, and the Elder Abuse Initiative (EAI).

Background:

For the first time in Iowa history, the Iowa Legislature approved in 2001, approximately \$475,000 to fund strategies for elder abuse detection, training and services in an effort to evaluate Iowa's fragmented system. This endeavor became known as Iowa's Elder Abuse Initiative demonstration projects. These projects were located in 4 of the 13 Area Agencies on Aging and available in 22 of Iowa's 99 counties. EAI focused on the prevention, intervention, detection, and reporting of elder abuse, neglect and exploitation by presenting elders with options to enhance their lifestyle choices.

Elder Abuse Initiative Demonstration Projects:

The EAI was identified as a possible bridge between dependent adult abuse and elder abuse to alleviate older Iowans from falling through the system cracks. Elder abuse is defined in the Federal Older Americans Act as the abuse, neglect or exploitation of an individual age 60 or older. Iowa Code Chapter 235B, Dependent Adult Abuse is defined by meeting the following three criteria: 1) Alleged victim shall be a dependent adult (Age 18 or older); 2) Alleged perpetrator shall be a caretaker to the dependent adult; and 3) Must be an allegation of abuse recognized by Iowa Code Section 235B. The constraints of the dependent adult abuse law means that many Iowans age 60 or older experiencing abuse, neglect and exploitation are left in situations that lead to the deterioration of their physical health, mental health, and/or financial status. The EAI was a method to intervene in the situation and assist the elder victim and to help navigate them through the system.

This service delivery system was created through partnerships with local stakeholders. These partners included Area Agencies on Aging, the Department of Human Services (DHS), law enforcement, county attorney's, health care providers, service providers, and other community collaborators. The clients of these projects were age 60 or older; dependent or independent; not living in a licensed health care facility; at risk of abuse, neglect or exploitation; or experiencing abuse, neglect or exploitation.

Outcomes:

Data was collected in the earlier EAI years, State Fiscal Year 2003 through Fiscal Year 2006; however, there was a wide variation due to an increase in demonstration projects, a refinement of data definitions and an expansion of outcome measures. State Fiscal Year 2007 through State Fiscal Year 2011, provided consistent comparable data establishing a solid foundation.

- 11,903 Total Referrals;
- 66% Had Mental Health Issues;
- 44.4% Experienced Financial Exploitation;
- 30.7% Experienced Denial of Critical Care by an Adult
- Only an Estimated 16% of EAI Clients Fell into the Category of Dependent Adult Abuse
- Identified financial exploitation and denial of critical care (neglect) by an adult as the top two categories of elder abuse

Conclusions:

- That elder abuse, neglect and financial exploitation (as defined by the Older Americans Act: Elder abuse is defined in the Older American's Act as the abuse, neglect or exploitation of an individual age 60 or older) is grossly under reported and under recognized in Iowa as substantiated by the collected data. It is estimated based upon the data reported in the 22 counties served through the Elder Abuse Intervention program an estimated 41,656 older Iowans, during FY07 and FY11, did not receive elder abuse related intervention, support and potential services.
- The EAI proved the need for an elder abuse system since only an estimated 16% of referrals met the dependent adult abuse the criteria; meaning DHS had the authority to become involved. Whereas 84% of the EAI referrals did not meet the criteria of dependent adult abuse and therefore would have fallen between the cracks had EAI not been in those counties.
- The success of the project was built upon interdisciplinary team work and intervention strategies.

Recommendations:

- Establish a definition of elder abuse separate from dependent adult abuse
- Create a statewide elder abuse intervention system
- Amend Iowa Code Chapter 235B – rejected referrals and referrals of individuals age 60 and older shall be referred to the local Area Agency on Aging
- Identify gaps in criminal law to address undue influence; non caretakers exploiting, neglecting and abusing individuals age 60 and older, legal remedies to address misuse of POAs (Elder Abuse Law)
- Create a statewide Office of Substitute Decision Maker

State Comparison
“Abuse” Defined in the Context of Elder/Adult Abuse

Included are the following examples of how “abuse” is defined in those states with highly-regarded elder/adult abuse statutes.

State (Code Section)	Definitions
Alaska (AS § 47.24.900)	“Abuse” means (A) the willful, intentional, or reckless non-accidental, and nontherapeutic infliction of physical pain, injury, or mental distress; or (B) sexual assault under AS 11.41.420.
Arizona (A.R.S. § 46-451)	<p>“Abuse” means: (a) intentional infliction of physical harm. (b) Injury caused by negligent acts or omissions. (c) Unreasonable confinement. (d) Sexual abuse or sexual assault.</p> <p>“Exploitation” means the illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage.</p> <p>“Neglect” means a pattern of conduct without the person’s informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.</p>
Arkansas (A.C.A § 5-28-103)	<p>"Abuse" means:</p> <p>(A) Any purposeful and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;</p> <p>(B) Any purposeful or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm;</p> <p>(C) Any purposeful threat that a reasonable person would find credible and non-frivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or</p> <p>(D) With regard to any adult long-term care facility resident by a caregiver, any purposeful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;</p> <p>"Adult maltreatment" means adult abuse, exploitation, neglect, physical abuse, or sexual abuse;</p>

State (Code Section)	Definitions
Utah (UT St § 76-5-111)	<p>“Abuse” means:</p> <ul style="list-style-type: none"> (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm; (ii) causing physical injury by knowing or intentional acts or omissions; (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician’s orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or (iv) deprivation of life-sustaining treatment, except: <ul style="list-style-type: none"> (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or (B) when informed consent, as defined in this section, has been obtained.
Colorado (C.R.S.A. § 18-6.5-103)	<p>Colorado does not define “abuse”.</p> <p>"Crime against an at-risk adult or at-risk juvenile" means any offense listed in section 18-6.5-103 or criminal attempt, conspiracy, or solicitation to commit any of those offenses.</p> <ul style="list-style-type: none"> • Section 18-6.5-103 includes criminal negligence, assault, robbery, theft, sexual assault, and unlawful sexual assault.
Illinois (320 ILCS 20)	<p>“Abuse” means causing any physical, mental or sexual injury to an eligible adult, including exploitation of such adult’s financial resources.</p> <p>Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, neglect or self-neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination.</p> <p>Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.</p>

State (Code Section)	Definitions
<p>Vermont (13 V.S.A. § 1380)</p>	<p>Vermont does not define “abuse”.</p> <p>"Bodily injury" means physical pain, illness, or any impairment of physical condition.</p> <p>"Lewd and lascivious conduct" means any lewd or lascivious act upon or with the body, or any part or member thereof, of a vulnerable adult, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person or the vulnerable adult.</p> <p>"Neglect" means intentional or reckless failure or omission by a caregiver to:</p> <p style="padding-left: 40px;">(A)(i) provide care or arrange for goods, services, or living conditions necessary to maintain the health or safety of a vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or an advanced directive as defined in chapter 111 of Title 18; or (ii) make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect or exploitation by others.</p> <p style="padding-left: 40px;">(B) Neglect may be repeated conduct or a single incident which has resulted in or could be expected to result in physical or psychological harm, as a result of subdivisions (A)(i) or (ii) of this subdivision (4).</p> <p>"Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.</p> <p>"Sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.</p> <p>"Sexual activity" means a sexual act, other than appropriate health care or personal hygiene, or lewd and lascivious conduct.</p>

State (Code Section)	Definitions
Utah (UT St § 76-5-111)	<p>“Abuse” means:</p> <ul style="list-style-type: none"> (v) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm; (vi) causing physical injury by knowing or intentional acts or omissions; (vii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician’s orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or (viii) deprivation of life-sustaining treatment, except: <ul style="list-style-type: none"> (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or (B) when informed consent, as defined in this section, has been obtained.



A compilation of feedback from Summit attendees.

Elder Abuse Summit Theme Summary

Current Law Not Adequate

- Iowa Dependent Abuse Law is not efficient / adequate:
 - The definition of dependent can be a barrier & determination of dependency is often unclear
 - Current dependent adult abuse law does not support elders who do not have a caretaker
- Need Elder Abuse Initiative statewide to protect ALL older adults who are victims of abuse, neglect or exploitation, not just those that meet the definition of dependent or have a caretaker
- Utilize best practices from Elder Abuse Initiative Demonstration Projects and provide resources to the area agencies on aging to implement those best practices

Substitute Decision Making Inadequacies

- Legal instruments such as Power of Attorney, Guardianships & Conservatorships are used to abuse and exploit elders. Documents used for the benefit of the decision maker rather than the individual in need of assistance
- Lack of entities or individuals to serve as guardians and conservators
- Lack of education regarding guardianships, conservatorships and powers of attorney roles and responsibilities
- Lack of oversight and interventions when substitute decision makers breach their duty to act in good faith

Inadequate Resources & Funding

- Enforce current laws
- Intervene
- Provide and train personnel
- Provide services
- Increase awareness
- Support abused elders
- Serve as guardians and conservators

Public Awareness Needed To

- Create public services announcements – create an advertising fund that allows departments to access a certain percentage of TV, radio, trade magazines to make citizens aware of programs and how to access support systems
- Provide family caregivers the tools, education, resources, reimbursement, respite, etc. to succeed
- Educate elders to plan for anticipated future needs related to becoming dependent and vulnerable; Empower and support the elder in this effort
- Support caregivers – community involvement; neighborhood watch

Training for Professionals

- Financial institutions need for personnel to know /have tools to identify and report financial abuse (training)
- Mandatory reporters on how to document
- Dementia
- Establish an educational program to provide:
 - Continuing education for a variety of individuals /occupations
 - Support more, better, and standardized training for all direct care workers
- Law enforcement and county attorneys
- Neighbor service providers (mail carriers, meter readers, etc.) to identify and report signs of problems

Lack of Coordination / Response / Action

- Poor communication between state agencies
- Lack of coordination among agencies and providers (Local 235B MDTs)
- Cases not being investigated because intake does not deem a person dependent
- Coordination – public & private partners
- Lack of central prosecution unit
- Law enforcement be able to press charges without victim agreement
- One place to call – if it is not dependent – whom do you call?

Additional Comments

- Mental health issues
- Lack of empathy
- Victims refuse help
- Blue zone- have neighbor who gets to know older neighbors
- More research including victims of child abuse who become perpetrators of elder abuse

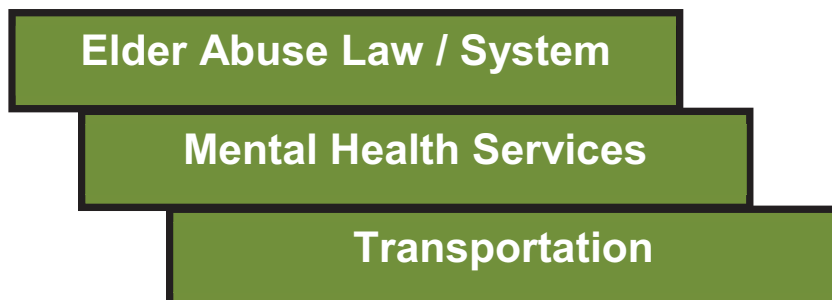
IOWA DEPARTMENT ON AGING

COMMUNITY CONVERSATIONS ON AGING SUMMARY

Conversations across Iowa: 16	Total Attendees: 646
Participants Included: <ul style="list-style-type: none"> • Consumers • Caregivers • Service Providers • Area Agency on Aging Staff and Board Members • Legislators • County Supervisors • Elected Officials • Media 	

Each conversation began with a presentation of demographics and highlights of House File 45 that mandates the Department on Aging to reduce the number of Area Agencies on Aging. Director Harvey answered questioned and listened to concerns. Frequently asked questions are below.

Top 3 Gaps in Services:

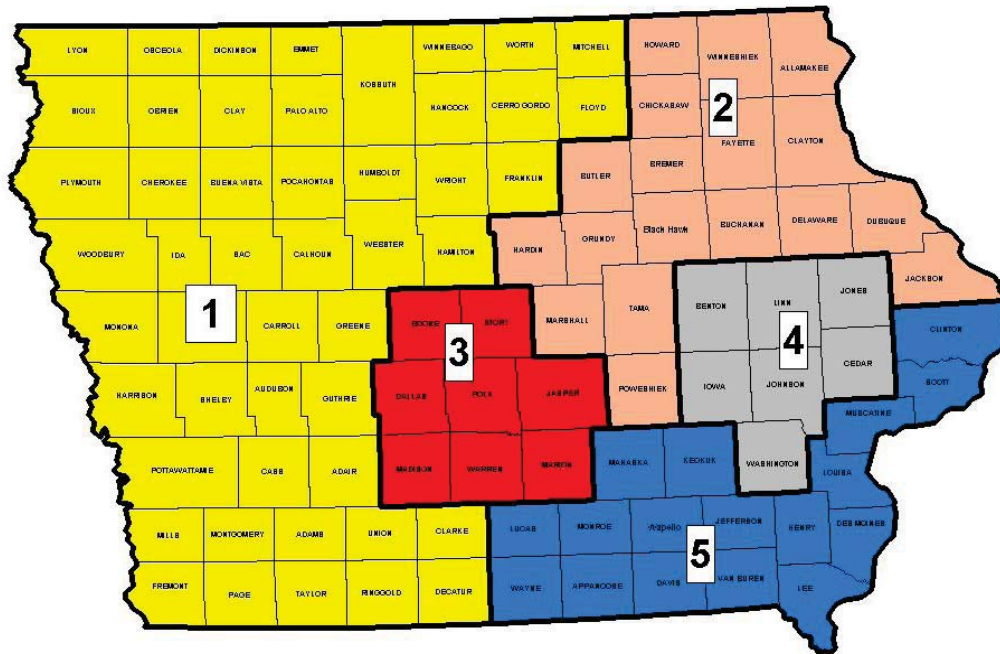


The Iowa Commission on Aging and legislators were provided feedback throughout the community conversations. At the conclusion of the tour the Iowa Commission on Aging met and voted unanimously to:

- Approve the map reducing the number of AAAs (See map below)
- Authorize the Department to begin development of a Request for Proposal (RFP)
- Authorize Director Harvey to prepare the required plan to be submitted to the Standing Committees and Joint Appropriations Committees as soon as possible.

IOWA DEPARTMENT ON AGING

Map approved by the Iowa Commission on Aging



Number of Attendees Per Location					
Date	Location	Attendees	Date	Location	Attendees
July 7	Mt. Pleasant Ottumwa	45 29	August 2	Calmar Cedar Falls	16 26
July 11	Coralville Toledo	89 20	August 4	Carroll Ankeny	34 21
July 26	Storm Lake Sioux City	53 27	August 9	Dubuque DeWitt	25 51
July 28	Atlantic Creston	33 113	August 11	Mason City Webster City	47 17

IOWA DEPARTMENT ON AGING

Community Conversations on Aging

FREQUENTLY ASKED QUESTIONS (FAQS)

WHAT IS THE PURPOSE OF THE DEPARTMENT ON AGING?

To provide older Iowans with the resources and support they deserve and need to lead productive, vital and dignified lives and to continue to choose Iowa as their home. This will be accomplished by developing a comprehensive, coordinated and cost effective system of long-term living and community supports and services which will help individuals maintain health and independence in their homes and communities.

HOUSE FILE 45

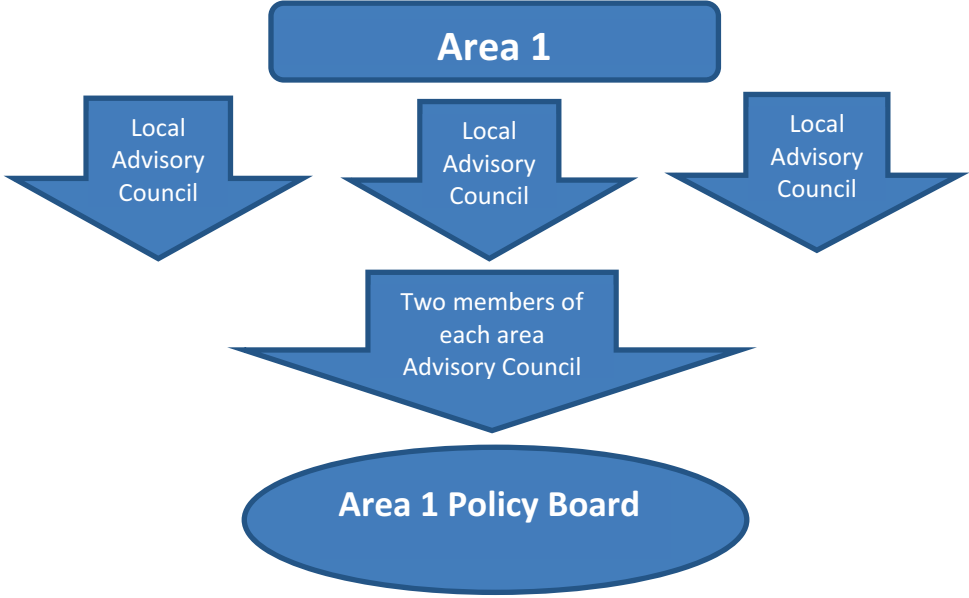
Can HF 45 be changed or rescinded?	HF 45 was passed by the House, passed by the Senate and signed into law by the Governor. It is now part of Iowa Code; therefore, the Department on Aging is mandated to enact and to submit a plan of action no later than December 15, 2011 to the Standing Committees for the reduction of the number of Area Agencies on Aging.
Will the current Area Agencies on Aging have a chance to come up with a plan?	The Area Agencies on Aging (AAA) have been encouraged to work with each other to present a plan of consolidation to the Department. If an acceptable plan is provided to the Department by the AAAs, it will be submitted to the Standings Committee for approval.
What happens if the Area Agencies on Aging do not come up with a plan?	The Department will then need to recommend a plan which will be submitted to the Standings Committees as required by HF45. Once a plan is approved, the Department would then issue a Request for Proposal (RFP) according to State Administrative Rules.
How long will the transition process take?	HF45 mandates the reduction be effective July 1, 2012, which marks the beginning of a projected 3 to 5 year transition period.

WILL THESE TYPES OF GRASSROOT CONVERSATIONS CONTINUE IN THE FUTURE?

Director Harvey is committed to ongoing dialogues in local communities. The Older Americans Act is built upon a "grassroots up" system and this is a positive approach to ensure our customers are part of the development and structure of the state unit on aging and its aging network in Iowa.

WHAT CONCERNS/ISSUES WERE EXPRESSED DURING THE COMMUNITY CONVERSATIONS?

Accessibility of services due to reorganization	Director Harvey, Commission on Aging, IDA staff and the Area Agencies on Aging are committed to maintaining a seamless, consistent, customer focused delivery system transition.
Direct Services or Subcontract	AAA's will continue to determine on the local level whether they provide direct services or subcontract with providers. Federal and state guidelines must be followed with waivers required for certain services should an area agency on aging decide to provide directly rather than contract.
Volunteer & Advocate Base	Need to grow the next generation of volunteers and grassroots advocates. Local AAA's working with high schools, colleges, associations, etc.

Loss of Local Access and Participation	<p>The modernization provides an opportunity for greater local access and participations at the grass roots level.</p> <p>Director Harvey envisions a governing board at each area agency on aging comprised of representation from local advisory councils across the combined areas to provide an avenue for community specific feedback.</p>  <pre> graph TD A1[Area 1] --> LAC1[Local Advisory Council] A1 --> LAC2[Local Advisory Council] A1 --> LAC3[Local Advisory Council] LAC1 --> TMA[Two members of each area Advisory Council] LAC2 --> TMA LAC3 --> TMA TMA --> A1PB([Area 1 Policy Board]) </pre>
Mental Health Outreach, Treatment, Placement	<p>Infrastructure needs to be enhanced to better serve persons with mental health issues of all ages. IDA is working with DHS and other partners to address this issue.</p>
Elder Abuse, Neglect and Exploitation	<p>IDA is working to strengthen elder abuse support and services. Close attention is being given to the Elder Justice Act passed as part of the Affordable Care Act to ensure Iowa’s elder rights programs embrace those principles and strategies.</p>
Visibility, Education and Outreach	<p>IDA and the AAA network continue to increase public awareness through many approaches. A strategy will be developed with the “new network” of AAAs and IDA in the future.</p> <p>Topics include but not limited to:</p> <ul style="list-style-type: none"> • Health and wellness • Options for long term supports and services • Aging Disability and Resource Center (ADRC) • Family Caregiver Support • Elder Justice
Generational Differences	<p>Generations have different needs and expectations which need to be identified when long term care supports and services are considered. Again, the Community Conversations is a beginning point to gather different needs, ideas, and approaches as we design the “future”.</p>

Quality of Care	One of the Department on Aging's priorities is to strengthen partnerships with other state agencies, universities, associations, and other partners involved with aging issues to streamline systems, processes, find efficiencies for a seamless, high quality delivery system. The Community Conversations is an important vehicle for us to work with our customers to ensure we address these issues.
Social Networking	As congregate meal sites and other areas of socialization decrease, be mindful of the need to increase face to face gatherings and activities in the community. Social media such as Skype, Face Book and email can assist with staying in touch with friends and family. IDA is working to design policies/procedures to embrace social networking while still maintaining privacy and security of individuals AND not replacing face-to-face options.
Statewide Availability of Services	A list of core services, identified jointly between the IDA and the AAAs, will be made available across the state. In addition, flexibility will be maintained to customize services as identified by the local community.

1998 Dependent Adult Abuse Professional Forum Summary

Sixteen forums were held across the state to hear from professionals working in the field about how the dependent adult abuse law and system worked. Opinions were sought on what was working well, what could work better and what their suggestions might be for improvements and/or changes at the local and state level.

- 316 individuals attended representing 71 counties
- Questions asked
 - How do the current laws, services and systems help protect elders and dependent adults?
 - What needs to be improved?
 - What can we do to create the ideal system for protecting dependent adults?
- Summary
 - Education to Raise Awareness and Work Toward Prevention
 - Education for Mandatory Reporters
 - Systemic Changes Need to Occur
 - Adequate Funding Needed

2003 Dependent Adult Abuse Follow-Up Survey

(Results published in the Social Work in Health Care, Quarterly Journal, Volume 40, Number 2, 2004)

The Dependent Adult Protection Advisory Council (DAPAC) sponsored and developed a follow-up survey. The questions were based on the summary outcomes which included the following topics: General Systemic Issues; Training and Education; Reporting; and Awareness of Dependent Adult Abuse and Elder Abuse.

- 1000 surveys were disseminated to the organizations or entities that were represented at the 1998 forums
- 301 surveys returned (30%)
- Summary
 - An Increase in Abuse Awareness is Needed
 - Increase in Communication
 - Continue to Collaborate with Community Partners to Build a Service Delivery and Protection System

2006 Dependent Adult Abuse Professional Forums Summary

Nine forums were held across the state to continue the ongoing dialogue with professionals and stakeholders about how the service delivery and protection system for dependent adults and elders is functioning. Opinions were sought on what was working well, what could work better and their suggestions for improvements and/or changes at the local and state level.

- 212 individuals attended representing 52 counties
- Questions asked
 - How do the current laws, services and systems help protect elders and dependent adults?
 - What needs to be improved?
 - What can we do to create the ideal system for protecting dependent adults?
- Summary
 - Clear and consistent guidelines and protocols for determining dependency, what constitutes abuse, negligence and gross negligence and the implementation of active multidisciplinary teams
 - Expand the Elder Abuse Initiatives statewide which includes prevention, early intervention, support services, emergency shelters and specialized investigators
 - Education and training for law enforcement, county attorneys, investigators, community providers, consumer directed attendant care (CDAC), direct care workers and stakeholders including prosecution and penalties
 - Funding for
 - Public Awareness
 - Elder Abuse Initiative statewide; and
 - Office of Substitute Decision Maker.